

152 FERC ¶ 61,104  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Midcontinent Independent System  
Operator, Inc.

Docket No. ER15-1853-000

ORDER CONDITIONALLY ACCEPTING GENERATOR INTERCONNECTION  
AGREEMENT

(Issued August 3, 2015)

1. On June 4, 2015, Midcontinent Independent System Operator, Inc. (MISO) filed, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's regulations,<sup>2</sup> an unexecuted Generator Interconnection Agreement (GIA) among MISO, FutureGen Industrial Alliance, Inc. as the interconnection customer (FutureGen), and Ameren Services Company, as agent for Ameren Illinois Company, as the transmission owner (Ameren Illinois) regarding Project No. J239 (June 4 Filing). As discussed below, we conditionally accept the GIA, effective August 4, 2015, as requested, subject to a compliance filing.

**I. Background**

2. Project No. J239 is a 200 MW<sup>3</sup> coal-fired electric power generation plant with CO<sub>2</sub> capture technology located in Morgan County, Illinois. It will be developed by modifying and reconnecting an existing steam turbine generator at the Meredosia Energy

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. § 35.12 (2014).

<sup>3</sup> The maximum permissible net output is 140 MW (all studies were performed at a gross generator output of 200 MW and an auxiliary load served from the Meredosia East switching station of 60 MW, resulting in a net injection into the Transmission System of 140 MW).

Center, currently owned by AmerenEnergy Medina Valley Cogen, L.L.C.<sup>4</sup> MISO states that the GIA regarding Project No. J239 conforms to the *pro forma* GIA and contains the revisions conditionally accepted by the Commission on December 19, 2013 in Docket No. ER12-309-005,<sup>5</sup> and contains pending language filed with the Commission in Docket Nos. ER12-309-006 and ER14-2562-001. Accordingly, MISO asks that the Commission conditionally accept the GIA, effective August 4, 2015, subject to any subsequent revisions to be accepted by the Commission in Docket Nos. ER12-309 and ER14-2562, *et al.*<sup>6</sup>

3. MISO and the other parties to the GIA, however, have different positions regarding the timing of the initial payment. MISO's position is that Article 11.5 of the GIA<sup>7</sup> requires Interconnection Customers to elect, within five days of commencement of

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<sup>4</sup> June 4 Filing, GIA, Appendix A.

<sup>5</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 145 FERC ¶ 61,260 (2013).

<sup>6</sup> June 4 Filing, Transmittal Letter at 1-2, 3.

<sup>7</sup> Article 11.5 of the GIA states, in relevant part:

Interconnection Customer shall elect (and provide its election to the Transmission Provider within five days of the commencement of negotiation of the GIA pursuant to Section 11.2 of the GIP) to make either 1) an initial payment equal to twenty (20) percent of the total cost of Network Upgrades, Transmission Owner Interconnection Facilities, Transmission Owner's System Protection Facilities, Distribution Upgrades and/or Generator Upgrades (if the In-Service Date is less than or equal to five (5) years of the initial payment date); or 2) an initial payment equal to ten (10) percent of the total cost of Network Upgrades, Transmission Owner Interconnection Facilities, Transmission Owner's System Protection Facilities, Distribution Upgrades and/or Generator Upgrades (if the In-Service Date exceeds the initial payment date by more than five (5) years); or 3) the total cost of Network Upgrades, Transmission Owner Interconnection Facilities, Transmission Owner's System Protection Facilities, Distribution Upgrades and/or Generator Upgrades in the form of security pursuant to Article 11.6. The initial payment shall be provided to Transmission Owner by Interconnection Customer pursuant to this Article

(continued ...)

negotiations of a GIA, one of three options identified as an initial payment. According to MISO, the initial payment is required to be provided within 30 days of execution of the GIA by all parties, or in the instant case, within 30 days of acceptance by the Commission as the GIA is being filed unexecuted and the payment is being protested by the Interconnection Customer. MISO states that the initial payment was instituted by MISO as a means of demonstrating project readiness and, should a project not be ready to move forward, it should be removed from the interconnection queue to minimize impacts on other Definitive Planning Phase group members and any future projects. MISO adds that, as identified in Appendix B, Table A to the GIA which contains the Interconnection Customer and Transmission Owner Milestones, the Interconnection Customer elected to post 100 percent security for the cost of Transmission Owner Interconnection Facilities and Network Upgrades. Thus, pursuant to Article 11.5, MISO argues that this security should be provided within 30 days of Commission acceptance of the GIA.<sup>8</sup>

4. MISO states that FutureGen's position is that instead of MISO requiring it to post 100 percent security within 30 days of the GIA execution, MISO should not require it to post security until 30 days prior to the commencement of design, procurement, installation, or construction of the transmission owner interconnection facilities and network upgrades. To the extent that Ameren Illinois agrees to fund required network upgrades, FutureGen's position is that the amount of security should exclude the network upgrade costs and commitments to the extent security is waived by Ameren Illinois. Alternatively, MISO states that FutureGen's position is that it should be permitted to make an initial cash payment of 20 percent of such costs and cost commitments provided, however, that to the extent that Ameren Illinois agrees to fund required network upgrades, then the initial payment should exclude the network upgrades and thus be equal to 20 percent of all applicable costs and cost commitments of interconnection after subtracting the cost of network upgrades.<sup>9</sup>

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11.5 within...thirty (30) days of acceptance by FERC if the GIA is filed unexecuted and the payment is being protested by Interconnection Customer....

MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), Attachment X, Article 11.5 Initial Payment.

<sup>8</sup> June 4 Filing, Transmittal Letter at 2.

<sup>9</sup> *Id.*

## **II. Notice of Filing and Responsive Pleadings**

5. Notice of MISO's June 4 Filing was published in the *Federal Register*, 80 Fed. Reg. 32,946 (2015), with interventions and protests due on or before June 25, 2015. Prairie Power, Inc. filed a timely motion to intervene. Wabash Valley Power Association, Inc. filed a motion to intervene out-of-time (Wabash Valley). Ameren Illinois filed a motion to intervene and comments. FutureGen filed a motion to intervene, protest, and alternative request for waiver. On July 15, 2015, MISO filed a motion for leave to answer and answer. On July 20, 2015, Ameren Illinois filed a motion for leave to answer and answer. On July 30, 2015, FutureGen filed a motion for leave to answer and answer.

### **A. Protests and Comments**

6. FutureGen requests that the Commission either: (i) reject the GIA and direct MISO to allow FutureGen and Ameren Illinois to mutually agree to a Milestone date in Appendix B to the GIA that, consistent with the GIA and generator interconnection procedures (GIP), is at least 30 days prior to the commencement of the design, procurement, installation, or construction and that such dates for security be made consistent with the construction schedule in the Appendix B Milestones; or, in the alternative, (ii) order Ameren Illinois to provide and MISO to accept a limited written waiver from Ameren Illinois to allow FutureGen to post the 100 percent security at least 30 calendar days prior to the commencement of design, procurement, installation, or construction of the network upgrades. If the Commission does not grant the requested relief, then FutureGen requests that the Commission direct MISO to allow FutureGen to change its election from the 100 percent security option to the 20 percent initial payment option permitted by Article 11.5 of the GIA.<sup>10</sup>

7. FutureGen states that Ameren Illinois informed FutureGen in early 2015 that it did not require FutureGen to provide security until 30 calendar days prior to the commencement of the actual design and engineering work for the network upgrades, estimated to be July 3, 2016 under Milestone 8 in Appendix B to the GIA. Based on these discussions, FutureGen states that it notified MISO that it intended to elect posting 100 percent security in the form of a letter of credit. Although such Milestone date for posting security was acceptable to both FutureGen and Ameren Illinois, FutureGen asserts that MISO rejected the proposed later security posting deadline and revised Appendix B to reflect an earlier security posting date of June 24, 2015. Further, FutureGen states that MISO also informed FutureGen that it was now too late for FutureGen to change to the 20 percent cash security option. According to FutureGen, despite its attempts to discuss its desire to, pursuant to its interpretation of the Tariff, post

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<sup>10</sup> FutureGen Protest at 6, 9.

the 100 percent security 30 calendar days prior to the commencement of the design, procurement, installation, or construction, MISO has refused to agree to a mutual resolution of this issue.<sup>11</sup>

8. FutureGen states that the provisions of the GIA and GIP expressly allow for the Interconnection Customer and Transmission Owner to specify the dates in the Appendix B Milestones by which the security is to be posted, at least 30 calendar days prior to the commencement of the design, procurement, installation, or construction. According to FutureGen, MISO errs by insisting that FutureGen must make an initial payment of security to Ameren Illinois “within thirty days of execution, or in this case, within thirty days of Commission acceptance of the Interconnection Agreement.”<sup>12</sup> Rather, FutureGen observes that Article 11.5(3) of the GIP states in relevant part that an Interconnection Customer that elects to make an initial payment of the total cost of certain network upgrades and facilities will make such initial payment “in the form of security pursuant to Article 11.6.”<sup>13</sup> FutureGen further observes that the form of security pursuant to Article 11.6 may be “otherwise provided in Appendix B” to the GIA, and that it may be posted “thirty (30) Calendar Days prior to the commencement of the design, procurement, installation, or construction” and that “[s]uch security for payment shall be . . . pursuant to the construction schedule developed in Appendix B . . . .”<sup>14</sup> FutureGen adds that Article 5.5.2 of the MISO GIP states in relevant part that “unless the Parties otherwise

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<sup>11</sup> *Id.* at 4-6.

<sup>12</sup> *Id.* at 7 (citing June 4 Filing, Transmittal Letter at 2).

<sup>13</sup> Article 11.6 of the GIA states, in relevant part:

Unless otherwise provided in Appendix B, at least thirty (30) Calendar Days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of an element, . . . Interconnection Customer shall provide Transmission Owner, at Interconnection Customer’s selection, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Owner. . . . Such security for payment shall be in an amount sufficient to cover the applicable costs and cost commitments, . . . required of the Party responsible for building the facilities pursuant to the construction schedule developed in Appendix B . . . .

Tariff, Attachment X, Article 11.6 Provision of Security.

<sup>14</sup> FutureGen Protest at 8 (citing Tariff, Attachment X, Article 11.6 Provision of Security).

agree in writing,” the “Transmission Owner shall commence design of the Transmission Owner’s Interconnection Facilities, Network Upgrades and/or Distribution Upgrades, and procure necessary equipment as soon as practicable after . . .” the “Interconnection Customer has provided security to Transmission Owner . . . by the dates specified in Appendix B, Milestones.”<sup>15</sup>

9. In the event that the Commission does not direct MISO to allow FutureGen and Ameren Illinois to establish a Milestone date for the initial payment consistent with this understanding, FutureGen requests that the Commission find that good cause exists to direct Ameren Illinois to provide and MISO to accept a written waiver to allow FutureGen to post the security at least 30 calendar days prior to the commencement by Ameren Illinois of the design, procurement, installation, or construction of certain upgrades and facilities. FutureGen asserts that the Commission will grant such limited waivers, which are permitted under Article 30.6 of the GIP,<sup>16</sup> if it finds that good cause exists to grant a waiver of limited scope, no undesirable consequences are evident from granting the waiver request, and the resultant benefits to customers are evident. FutureGen argues that Ameren Illinois will not be adversely affected by such a waiver because it does not need to commence design of the upgrades/facilities or procure necessary equipment until after FutureGen has provided security. In addition, FutureGen states that allowing a one-time waiver for the benefit of FutureGen will create no adverse or undesirable consequences for MISO, or any other interconnection customers.<sup>17</sup>

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<sup>15</sup> *Id.* at 8-9 (citing Tariff, Attachment X, Article 11.6 Provision of Security).

<sup>16</sup> Article 30.6 of the GIA states:

The failure of a Party to this GIA to insist, on any occasion, upon strict performance of any provision of this GIA will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party. Any waiver at any time by any Party of its rights with respect to this GIA shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this GIA. Termination or Default of this GIA for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain Interconnection Service from Transmission Provider. Any waiver of this GIA shall, if requested, be provided in writing.

Tariff, Attachment X, Article 30.6 Waiver.

<sup>17</sup> FutureGen Protest at 9-11.

10. FutureGen further argues that MISO's position contravenes the intent of the Commission to allow Appendix B Milestone dates that reflect the mutual agreement of the Interconnection Customer and Transmission Owner. In addition, although MISO explained that its insistence on immediate security posting is intended to show that an interconnection customer is serious about developing the actual project, FutureGen argues that this is a misplaced concern. FutureGen states that in Order No. 2003, responding to comments about the timing of the posting of security, and whether such security should be required to be posted earlier than 30 calendar days in advance of the procurement, installation, or construction of Interconnection Facilities or Network Upgrade projects, the Commission held that the timing for the posting of the security should be reasonably tied to the timing when procurement and construction will begin:

not require that the security be available at an earlier time, or at some specified period after execution of an interconnection agreement, because the purpose of the security is to fund procurement and construction. Since it is uncertain when procurement and construction will begin, it is reasonable to make such activity the trigger for tendering the security.<sup>18</sup>

FutureGen asserts that, in this case, the project remains in active development, and substantial sums have been spent, and continue to be spent by FutureGen to move forward.<sup>19</sup>

11. FutureGen further observes that the party at risk in this case is Ameren Illinois, not MISO. According to FutureGen, the original intent was for Project No. J239 to be cost-shared by the Department of Energy (DOE) and the private sector, i.e., FutureGen, but that DOE subsequently suspended its cost-sharing.<sup>20</sup> Notwithstanding DOE's decision to suspend participation, FutureGen has continued project development efforts. FutureGen further observes that it is a non-profit corporation and, as such, has a limited balance sheet, and its ability to arrange the credit support on the schedule demanded by MISO is neither consistent with the GIA and GIP, nor practical nor fairly applied. In addition, FutureGen argues that MISO's position unduly discriminates and prejudices entities like

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<sup>18</sup> *Id.* at 13 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 593 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008)).

<sup>19</sup> *Id.* at 13.

<sup>20</sup> *Id.* at 11 (citing *Humphreys Test.* at P 4).

FutureGen and unnecessarily impedes the realization of the substantial public benefits of the project.<sup>21</sup>

12. FutureGen argues that the requested relief is consistent with, and advances, the public interest because, among other things, the project will be a first-of-its kind and the cleanest fossil fuel-fired power plant in the world, serving as a model for clean energy production and a technological response to climate change concerns. Many of the benefits will be shared among all participants, including project stakeholders, the energy industry, the environmental community, and the general public.<sup>22</sup> FutureGen does not raise any argument about what, if any, network upgrade cost should be excluded from an initial payment should Ameren Illinois seek to fund any required network upgrades.

13. Ameren Illinois asks the Commission to reject the GIA without prejudice because Ameren Illinois was not given time under the Tariff to review and consider whether it would execute the GIA. If the Commission does not reject the GIA, Ameren Illinois states that, only with respect to the timing of posting security, not the amount, Ameren Illinois has no objection to FutureGen providing security for network upgrades on the timeline articulated by FutureGen (not being required to post security until 30 days prior to the commencement of design, procurement, installation, or construction of facilities under the GIA).

14. Ameren Illinois observes that Section 11.3 of the GIP states that, “[w]ithin thirty (30) Calendar Days following . . . a request by Interconnection Customer that the GIA . . . be filed unexecuted . . . Transmission Owner shall either (i) execute the tendered GIA, . . . or (ii) request in writing that Transmission Provider file with FERC the GIA.”<sup>23</sup> According to Ameren Illinois, it is only after the Transmission Owner has had this opportunity to review the Interconnection Customer’s request that MISO shall file the GIA. Ameren Illinois’ understanding is that FutureGen formally indicated to MISO it would not sign the GIA on May 21, 2015, but MISO filed it with the Commission 10 business days later without Ameren Illinois’ input. Ameren Illinois further observes that MISO’s filing made no statement at all about Ameren Illinois’ position on the disputed issues. According to Ameren Illinois, MISO’s filing therefore does not comply with the Tariff and sets precedent in which the Transmission Owner’s review of the GIA is cut off

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<sup>21</sup> *Id.* at 11-12, 13.

<sup>22</sup> *Id.* at 14.

<sup>23</sup> Ameren Illinois Comments at 3-4 (citing Tariff, Attachment X, Article 11.5 Initial Payment).



despite the fact that issues relating to security for required facilities impact the Transmission Owner, not MISO. Ameren Illinois asserts that GIAs are three-party agreements, and issues relating to security for required facilities impact the Transmission Owner, not MISO.<sup>24</sup>

15. Ameren Illinois further states that the June 4 Filing refers to other disputed issues raised by FutureGen related to the amount and form of required security. Ameren Illinois understands that FutureGen is no longer pursuing these issues. If FutureGen does pursue these issues in comments on the June 4 Filing, Ameren Illinois states that it reserves the right to address the merits of those questions at that time.<sup>25</sup>

## **B. Answers**

16. MISO argues that the GIA and GIP do not allow FutureGen and Ameren Illinois to mutually agree on a date for posting security in a manner that is contrary to the Tariff. MISO observes that FutureGen points to Article 11.5(3) that provides for an initial payment “in the form of security pursuant to Article 11.6.” Despite the reference to Article 11.6, MISO states that Article 11.5 specifically provides that the initial payment/security is required, in the instant case, within “thirty (30) days of acceptance by FERC if the GIA is filed unexecuted and the payment is being protested by Interconnection Customer.” According to MISO, this portion of Article 11.5 applies to this proceeding while FutureGen’s reference to Article 11.6 does not apply because Article 11.6 provides alternative arrangements and timeframes for “discrete portion[s] of an element, not otherwise funded under Article 11.5....” MISO states that since the GIA in question does not pertain to the construction of facilities contemplated under Article 11.6, the alternative arrangements and timeframes described in Article 11.6 do not apply here. Lastly, MISO asserts that if Article 11.5 were read to merely point to Article 11.6, there would be no purpose to having two separate Articles, one providing a default rule for initial payment and another stating that the default rule does not apply.<sup>26</sup>

17. Further, MISO asserts that FutureGen’s linkage argument from Article 11.5 to Article 11.6 again fails with Appendix B, Section 3 of the GIA which states: “the description and date entries listed in the following tables are provided solely for the convenience of the Parties in establishing their applicable Milestones consistent with the

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<sup>24</sup> *Id.* at 3-4.

<sup>25</sup> *Id.* at 1, 4-5. As noted above, FutureGen has not raised these issues in its comments to the June 4 Filing.

<sup>26</sup> MISO Answer at 4-5.

provisions of this GIA and the terms of the GIP.”<sup>27</sup> According to MISO, the entries listed in Appendix B are not merely subject to the mutual agreement of the Interconnection Customer and the Transmission Owner; rather, Appendix B is subject to the provisions of the GIA and the GIP. Therefore, MISO argues that FutureGen and Ameren Illinois’ mutual agreement of a later date of posting security is not valid, because Article 11.5 states that the initial payment is required “within . . . thirty (30) days of acceptance by FERC if the GIA is filed unexecuted and the payment is being protested by Interconnection Customer . . . .”<sup>28</sup>

18. MISO also argues that FutureGen omitted Commission precedent regarding deviation from the pro forma GIA in Order No. 2003. MISO states that FutureGen argues that the Commission’s intent in Order No. 2003 was to emphasize that “the timing for the posting of security should be reasonably tied to the timing when procurement and construction will begin.”<sup>29</sup> According to MISO, however, in the Queue Reform Order, the Commission specifically accepted MISO’s deviation from the pro forma GIA in Article 11.5 and agreed with MISO’s process reforms.<sup>30</sup> Therefore, contrary to FutureGen’s argument, the Commission approved MISO’s Article 11.5 security provisions requiring an initial payment or security within a specified timeframe.<sup>31</sup>

19. In addition, MISO asserts that a waiver allowing FutureGen and Ameren Illinois to agree on a date for security posting would create uncertainty for lower-queued projects, as additional queue cycles will contain Project J239 and be subject to restudy should it be withdrawn further in the future, rather than immediately, due to the delayed payment requirement. MISO observes that, in the Queue Reform Order, the Commission emphasized that “for projects that are truly viable, the negotiations necessary to finalize business arrangements should be nearly finalized well prior to the actual execution of the GIA such that once the GIA is executed, the other arrangements necessary to obtain funding should be able to be finalized and executed soon after the GIA is executed.”<sup>32</sup> MISO states that ordering a waiver allowing security to be posted at a later date would

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<sup>27</sup> *Id.* at 5 (citing Tariff, Attachment X, Appendix B, Section 3).

<sup>28</sup> *Id.* (citing Tariff, Attachment X, Article 11.5 Initial Payment).

<sup>29</sup> *Id.* at 5-6 (citing FutureGen Protest at 13).

<sup>30</sup> *Id.* at 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,233, at P 178 (2012) (Queue Reform Order)).

<sup>31</sup> *Id.* at 5-6.

<sup>32</sup> *Id.* at 6-7 (citing Queue Reform Order, 138 FERC ¶ 61,233 at P 179).

contravene the Commission's intent to promote efficiency and discourage "late-stage terminations and the potential for cascading and iterative restudies."<sup>33</sup> MISO adds that FutureGen's reliance on Article 30.6 of the GIP is misplaced because this provision describes general contract principles preventing a waiver from being created based on previous behavior, and FutureGen also incorrectly conflates a standard waiver provision with allowing two parties to a three-party agreement to contract around an explicit, written provision. MISO also asserts that allowing FutureGen to change its initial payment election would violate Article 11.5 which requires a short time-frame of five days to encourage potential Interconnection Customers to make a prompt financing decision.<sup>34</sup>

20. Finally, MISO argues that the Commission should deny Ameren Illinois' request because Ameren Illinois misreads the GIP and had ample time to respond. Although Ameren Illinois correctly points out that Section 11.3 of the GIP allows the Transmission Owner 30 calendar days to sign a GIA or request that it be filed unexecuted, MISO observes that there is also a 10 business day-window for MISO to file an unexecuted GIA after receiving notice from one party.<sup>35</sup>

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<sup>33</sup> *Id.* at 7 (citing Queue Reform Order, 138 FERC ¶ 61,233 at P 178).

<sup>34</sup> *Id.* at 6-8.

<sup>35</sup> Section 11.3 of the GIP states:

Within thirty (30) Calendar Days following execution of the GIA, and, as applicable, FCA(s) and/or MPFCA(s) by Interconnection Customer, or a request by Interconnection Customer that the GIA, and, as applicable, FCA(s) and/or MPFCA(s) be filed unexecuted pursuant to Section 11.2, Transmission Owner shall either (i) execute the tendered GIA, and, as applicable, FCA(s) and/or MPFCA(s) and tender them to Transmission Provider for its execution, or (ii) request in writing that Transmission Provider file with FERC the GIA, and, as applicable, FCA(s) and/or MPFCA(s) in unexecuted form. As soon as practicable, but not later than ten (10) Business Days after receiving either the executed tendered GIA or the request to file an unexecuted GIA, and, as applicable, FCA(s) and/or MPFCA(s), Transmission Provider shall file the GIA, and, as applicable, FCA(s) and/or MPFCA(s) with FERC . . . .

Tariff, Attachment X, Section 11.3 Execution and Filing.

21. According to MISO, once MISO received notice from FutureGen that it wished to submit the GIA unexecuted, MISO was bound by the Tariff to submit the unexecuted GIA to the Commission within 10 business days. MISO states that it provided notice to the parties that it would file the GIA on June 4, 2015 after receiving FutureGen's request to file the unexecuted GIA. MISO asserts that Ameren Illinois never notified MISO of any objections prior to MISO's announced filing date, and Ameren Illinois had an opportunity to execute the GIA under the provisions of the Tariff, or inform MISO of its desire to protest the GIA, and failed to do so. MISO states that the Commission should therefore deny Ameren Illinois' request. Should the Commission nonetheless find that MISO should have allowed Ameren Illinois 30 calendar days to decide whether to execute the GIA or request an unexecuted filing, MISO states that the Commission should not reject MISO's filing but simply stay the effective date of the GIA until September 4, 2015 (reflecting the additional time period allowed, but recognizing that Ameren Illinois is not protesting anything in the GIA).<sup>36</sup>

22. In its answer, Ameren Illinois asserts that MISO's interpretation of Section 11.3 of the GIP should be rejected as it contradicts the plain text of the Tariff, ignores the nature of a three-party agreement, and needlessly cuts off a Transmission Owner's review of a contested GIA. Rather, Ameren Illinois argues that it is the receipt by MISO of the executed GIA, or a request for an unexecuted GIA filing, from the Transmission Owner that triggers MISO's 10-day filing obligation.<sup>37</sup>

23. According to Ameren Illinois, MISO's interpretation is incorrect because it reads the Transmission Owner's 30-day review period entirely out of the Tariff by insisting that MISO must file a GIA within 10 days of an Interconnection Customer's decision. Moreover, Ameren Illinois argues that MISO's interpretation would render the 30-day review meaningless and ignore another provision of Section 11.3 of the GIP which provides that any filing by MISO of an unexecuted GIA must contain an "...explanation of any matters as to which Interconnection Customer, Transmission Owner and Transmission Provider disagree."<sup>38</sup> Ameren Illinois states that MISO's filing contained no such explanation of Ameren Illinois' position because MISO did not provide Ameren Illinois its requisite review period. Finally, Ameren Illinois questions what purpose is

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<sup>36</sup> MISO Answer at 8-9.

<sup>37</sup> Ameren Illinois Answer at 2.

<sup>38</sup> *Id.* at 3 (citing Tariff, Attachment X, Section 11.3 Execution and Filing).

served if MISO's interpretation is correct and MISO is permitted to ignore a Transmission Owner's position on the contested financial security issues which directly impact it.<sup>39</sup>

24. In its answer, FutureGen asserts that Article 11.5 of the GIA states that the form of security is made pursuant to Article 11.6 of the GIA, and Article 11.6 expressly states that the form of security may be "otherwise provided in Appendix B" to the GIA, and that security may be posted "thirty (30) Calendar Days prior to the commencement of the design, procurement, installation, or construction" and that "[s]uch security for payment shall be . . . pursuant to the construction schedule developed in Appendix B . . . ."<sup>40</sup> As such, FutureGen states that the provisions of the GIA and GIP expressly allow the Interconnection Customer and Transmission Owner to agree in writing to specify the dates in the Appendix B Milestones by which the security is to be posted. FutureGen also states that, by MISO's reasoning, if an Interconnection Customer or Transmission Owner wished to submit an interconnection agreement unexecuted, the Interconnection Customer and Transmission Owner somehow forfeit their right to mutually agree on a Milestone date for posting security and are subject to MISO's directives.<sup>41</sup>

25. FutureGen states that in the Queue Reform Proceeding, the Commission held "that independent entities, such as MISO, should have flexibility to customize their interconnection procedures to fit regional needs."<sup>42</sup> FutureGen further asserts that the current GIA provisions in Articles 11.5, 11.6, and Appendix B allow some flexibility for the Transmission Owner and Interconnection Customer to agree to Milestone dates that are mutually acceptable, in a manner that remains consistent with the holdings of Order Nos. 2003 and 2003-A. FutureGen also states that in addition, Section 5.5 of the GIP retains the flexibility for the Interconnection Customer and Transmission Owner to

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<sup>39</sup> *Id.* at 2-4.

<sup>40</sup> FutureGen Answer at 2 (citing Tariff, Attachment X, Article 11.6 Provision of Security).

<sup>41</sup> *Id.* at 2-5.

<sup>42</sup> *Id.* at 5 (citing Queue Reform Order, 138 FERC ¶ 61,233 at PP 171-181).

mutually agree to Appendix milestone deadlines.<sup>43</sup> FutureGen adds that in Section 30.6 of the GIP allows for waivers, and the Commission will grant such waivers in cases such as this, where good cause exists, the waiver is of limited scope and would cause no undesirable consequences to other interconnection customers.<sup>44</sup> FutureGen requests that the Commission reject the GIA and grant the relief requested in its protest.<sup>45</sup>

### **III. Discussion**

#### **A. Procedural Matters**

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will accept Wabash Valley's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answers submitted by MISO, Ameren Illinois, and FutureGen because they have provided information that assisted us in our decision-making process.

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<sup>43</sup> *Id.* (citing Article 5.5 of the GIA (“[U]nless the Parties otherwise agree in writing,” the “Transmission Owner shall commence design of the Transmission Owner’s Interconnection Facilities, Network Upgrades and/or Distribution Upgrades, and procure necessary equipment as soon as practicable after . . .”) and Article 5.5.2 of the GIA (the “Interconnection Customer has provided security to Transmission Owner . . . by the dates specified in Appendix B, Milestones”). Tariff, Attachment X, Article 5.5, 5.5.2 Equipment Procurement.

<sup>44</sup> *Id.* at 5-6 (citing *Pac. Gas & Elec. Co.*, 139 FERC ¶ 61,027 (2012); *Pac. Gas & Elec. Co.*, 136 FERC ¶ 61,131 (2011) (orders granting requests for limited waiver of certain generation interconnection agreements that require interconnection customers to provide security)).

<sup>45</sup> *Id.* at 5-6.

**B. Commission Determination**

28. We conditionally accept the GIA, effective August 4, 2015, subject to a further compliance filing.

29. With respect to the disputed interpretations of Article 11.5 of the GIA regarding the timing of the initial payment, we agree with MISO's interpretation of its Tariff. We find that Article 11.5 requires that the initial payment, including the posting of security to cover the total cost of the network upgrades, must be made, in this case, within 30 days of acceptance by the Commission given that the GIA was filed unexecuted and the payment was protested by Interconnection Customer. As MISO observes, such an interpretation is consistent with the discussion in the Queue Reform Order.<sup>46</sup> In that order, the Commission conditionally accepted MISO's proposed Article 11.5 of the GIA which provided "several options for an Interconnection Customer to make an initial payment in cash or security for the first milestone soon after the execution of the GIA" which were intended to reduce the concerns regarding uncertainty about whether a project will proceed.<sup>47</sup> The Commission agreed with MISO "that the customer's ability to build long lead times into its milestones while taking no action towards achieving commercial operation coupled with the lack of a financial commitment to reach commercial operation has significantly contributed to the problem of late-stage terminations and the potential for cascading and iterative restudies."<sup>48</sup> Given the problems MISO was attempting to resolve through the timing of the Initial Payment, it is evident that all forms of the Initial Payment, including the posting of security equal to 100 percent of the costs of the network upgrades, must be posted soon after the execution or acceptance of the GIA pursuant to Article 11.5 of the GIA. In addition, at the time MISO proposed Article 11.5 of the GIA regarding the Initial Payment, it made the following corresponding revisions to Article 11.6 of the GIA: "...at least thirty (30) Calendar Days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of an ~~initial~~ element, not otherwise funded under Article 11.5..."<sup>49</sup> Thus, it is also clear that, as MISO asserts above, the provision of security pursuant to Article 11.6 only applies to elements not previously funded under Article 11.5.

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<sup>46</sup> See Queue Reform Order, 138 FERC ¶ 61,233 at PP 169-183.

<sup>47</sup> MISO, Docket No. ER12-309-000, Transmittal Letter at 19-20 (Nov. 1, 2011).

<sup>48</sup> Queue Reform Order, 138 FERC ¶ 61,233 at P 178.

<sup>49</sup> MISO, Docket No. ER12-309-000, Transmittal Letter at, 20; redlined Tariff sheets, Article 11.6 of the GIA (Nov. 1, 2011).

30. However, given the unique circumstances of this case, we will allow FutureGen to change its election and instead provide an initial payment of 20 percent of the total cost of the network upgrades. We find that when Ameren Illinois informed FutureGen that Ameren Illinois did not require FutureGen to establish security until the commencement of the actual design and engineering work for the network upgrades,<sup>50</sup> Ameren Illinois appears to have led FutureGen to mistakenly believe that such a schedule was permissible for this payment option under the Tariff. Consistent with this finding, we require MISO to permit FutureGen to change its election of initial payment, and direct MISO, in a compliance filing due within 30 days of the date of this order, to file a revised GIA reflecting this new election in Appendix B to the GIA.

31. With respect to the disputed interpretations of Section 11.3 of the GIP, we agree with Ameren Illinois' interpretation of the Tariff. MISO should have given Ameren Illinois, as the Transmission Owner, 30 days from FutureGen's request for an unexecuted GIA filing to either execute the GIA or request in writing that MISO file the GIA unexecuted with the Commission. However, Ameren Illinois has not alleged any specific harm which would be remedied by additional time to review in this instance. Going forward, MISO should ensure that Transmission Owners are permitted the requisite time to review GIAs pursuant to the Tariff.

32. Finally, we reject FutureGen's request asking the Commission to direct Ameren Illinois to provide, and MISO to accept, a written waiver from Ameren Illinois allowing FutureGen to establish a revised Milestone date for the posting of the Initial Payment. Ameren Illinois cannot provide waiver of the MISO Tariff.

The Commission orders:

(A) The GIA is hereby conditionally accepted for filing, to become effective August 4, 2015, as discussed in the body of this order.

(B) MISO is hereby required to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>50</sup> Neither Ameren Illinois nor MISO dispute this representation by FutureGen.